

AO 243 (Rev. 09/17)

MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT
SENTENCE BY A PERSON IN FEDERAL CUSTODY

United States District Court		District <u>EASTERN District of Virginia (Richmond)</u>	
Name (under which you were convicted): <u>LAMONT E. MCCORD</u>		Docket or Case No.: <u>3:06-cr-00264</u>	
Place of Confinement: <u>F.C.I. Williamsburg</u>		Prisoner No.: <u>33071-183</u>	
UNITED STATES OF AMERICA		Movant (include name under which convicted) <u>V. LAMONT E. MCCORD</u>	

MOTION

1. (a) Name and location of court which entered the judgment of conviction you are challenging:

United States District Court For THE EASTERN District of Virginia (Richmond Division)
701 East Broad Street, ~~Richmond~~
Richmond, Virginia 23219

(b) Criminal docket or case number (if you know): 3:06 CR 264

2. (a) Date of the judgment of conviction (if you know): ~~4-21-2006~~ 2-06-2007

(b) Date of sentencing: 2-02-2007

3. Length of sentence: 96 months Imprisonment

4. Nature of crime (all counts): 922(g)(1) possession of a FIREARM By A convicted felon

5. (a) What was your plea? (Check one)

(1) Not guilty ☐

(2) Guilty ☒

(3) Nolo contendere (no contest) ☐

6. (b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, what did you plead guilty to and what did you plead not guilty to?

6. If you went to trial, what kind of trial did you have? (Check one)

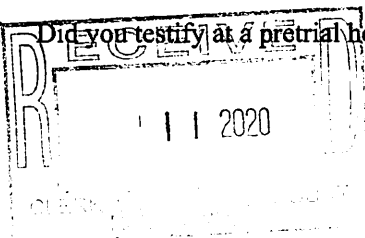
Jury ☐

Judge only ☐

7. Did you testify at a pretrial hearing, trial, or post-trial hearing?

Yes ☒

No ☐



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8. Did you appeal from the judgment of conviction?

Yes ☐No ☒

9. If you did appeal, answer the following:

(a) Name of court: _____

(b) Docket or case number (if you know): _____

(c) Result: _____

(d) Date of result (if you know): _____

(e) Citation to the case (if you know): _____

(f) Grounds raised: _____

(g) Did you file a petition for certiorari in the United States Supreme Court?

Yes ☐No ☒

If "Yes," answer the following:

(1) Docket or case number (if you know): _____

(2) Result: _____

(3) Date of result (if you know): _____

(4) Citation to the case (if you know): _____

(5) Grounds raised: _____

10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications, concerning this judgment of conviction in any court?

Yes ☒No ☐

11. If your answer to Question 10 was "Yes," give the following information:

(a) (1) Name of court:

United States District Court For The Eastern District of Virginia (Richmond Division)

(2) Docket or case number (if you know):

3:06 CR 264

(3) Date of filing (if you know): _____

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- (4) Nature of the proceeding: Asked for Attorney and transcripts
 (5) Grounds raised: _____

(6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes ☐No ☒

(7) Result: Memorandum Order Explaining denial of Attorney and Transcripts

(8) Date of result (if you know): _____

(b) If you filed any second motion, petition, or application, give the same information:

(1) Name of court: _____

(2) Docket of case number (if you know): _____

(3) Date of filing (if you know): _____

(4) Nature of the proceeding: _____

(5) Grounds raised: _____

(6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes ☐No ☐

(7) Result: _____

(8) Date of result (if you know): _____

(c) Did you appeal to a federal appellate court having jurisdiction over the action taken on your motion, petition, or application?

(1) First petition: Yes ☐ No ☒

(2) Second petition: Yes ☐ No ☐

(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not:

It was giving me instructions on how to attack conviction, how to obtain transcripts and who and how to obtain an attorney, who is eligible because I knew not what courts I was suppose to take

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12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground. Any legal arguments must be submitted in a separate memorandum.

GROUND ONE: Invalid Indictment

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

I MR. MCCORD AVERS That my Indictment for 922(g)(1) was invalid because of the GOVERNMENT'S omission of the knowledge-of-status element to the GRAND JURY is a required element

(b) Direct Appeal of Ground One:

- (1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐

No ☐

- (2) If you did not raise this issue in your direct appeal, explain why:

(c) Post-Conviction Proceedings:

- (1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐

No ☒

- (2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

- (3) Did you receive a hearing on your motion, petition, or application?

Yes ☐

No ☐

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(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this

issue: THE issue did NOT EXIST during time of sentencing OR appeal
AND my lawyer didn't inquire

GROUND TWO: UNCONSTITUTIONAL SENTENCE/CONVICTION UNDER 922(g)(1)

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

I MR. MCCORD AVERS THAT ~~AM~~ I AM NOW SERVING AN UNCONSTITUTIONAL SENTENCE/CONVICTION BECAUSE THE GOVERNMENT MUST HAVE NOT ONLY PROVED THAT I KNEW I POSSESSED A FIREARM AS CHARGED PURSUANT TO 922(g), BUT THAT I KNEW I BELONGED TO A CLASS OF PERSONS BARRED FROM POSSESSING A FIREARM OR FELL WITHIN THE PROHIBITED PERSONS CATEGORY. THIS BURDEN OF PROOF WAS NOT COMPLETELY FULFILLED AT TIME OF CONVICTION.

(b) Direct Appeal of Ground Two:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐No ☐

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(2) If you did not raise this issue in your direct appeal, explain why:

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐

No ☒

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐

No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐

No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐

No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

*The issue did not exist during time of sentencing or appeal
And my lawyer didn't inquire*

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GROUND THREE: Plea Agreement Was Not Knowingly OR Intelligently Entered

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

I MR. MCCORD AVER\$ that my Plea Agreement is invalid because I didn't knowingly or intelligently enter said plea agreement, because I was not properly or adequately notified of every required element needed to obtain a valid conviction under 922(g)(1) when I pled guilty. Further I MR. McCord state that the court was in error for accepting such plea agreement in violation of Rule 11. Before accepting a plea agreement the court must assure that the defendant know and understand every element

(b) Direct Appeal of Ground Three:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐No ☐

(2) If you did not raise this issue in your direct appeal, explain why:

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐No ☒

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐No ☐

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(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

THE ISSUE DID NOT EXIST DURING TIME OF SENTENCING OR APPEAL AND
MY LAWYER DID NOT INQUIRE

GROUND FOUR: INEFFECTIVE ASSISTANCE OF COUNSEL/CONFLICT OF INTEREST

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

MY ATTORNEY WAS REPRESENTING ME AND ASSISTING GOVERNMENT
HELPING THEM TO GET A JAN FAGGINS OUT WHO WAS TESTIFYING AGAINST
ME. MY ATTORNEY WAS REPRESENTING ME AND JAN FAGGINS AT THE SAME TIME.
WHO WAS ASSISTING THE GOVERNMENT

(b) Direct Appeal of Ground Four:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐No ☐

(2) If you did not raise this issue in your direct appeal, explain why:

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐No ☒

(2) If you answer to Question (c)(1) is "Yes," state:

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Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this

issue:

I WAS NOT AWARE OF THE ISSUE AT TIME OF CONVICTION OR APPEAL
AND MY LAWYER NEVER MADE ME AWARE HE WAS REPRESENTING BOTH OF
US AND THAT HE WAS ASSISTING GOVERNMENT WITH MR. VAN FAGGINS.

13. Is there any ground in this motion that you have not previously presented in some federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them:

SEE GROUNDS 1, 2, 3 AND 4. GROUNDS 1, 2, AND 3 DID NOT
EXIST AT TIME OF CONVICTION OR APPEAL AND MY LAWYER DID NOT INQUIRE
ABOUT APPEAL. GROUND 4 HAS NOT BEEN PRESENTED BEFORE BECAUSE I WAS NOT
AWARE OF THE ISSUE AT TIME OF CONVICTION OR APPEAL AND MY LAWYER NEVER MADE
ME AWARE

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14. Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court for the you are challenging? Yes ☐ No ☒

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised.

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At the preliminary hearing:

MR. HORACE HUNTER ESQ. 217 E. CLAYst Richmond, VA. 23219

(b) At the arraignment and plea:

MR. HORACE HUNTER ESQ.

(c) At the trial:

(d) At sentencing:

MR. HORACE HUNTER ESQ.

(e) On appeal:

(f) In any post-conviction proceeding:

(g) On appeal from any ruling against you in a post-conviction proceeding:

16. Were you sentenced on more than one court of an indictment, or on more than one indictment, in the same court and at the same time? Yes ☐ No ☒

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes ☒ No ☐

(a) If so, give name and location of court that imposed the other sentence you will serve in the future:

United States District Court for Eastern District of Virginia (Richmond Division)
701 E. Broad Street, Richmond, VA. 23219

(b) Give the date the other sentence was imposed: Original 12-18-2007 New 12-1-2011

(c) Give the length of the other sentence: 540 months New 324 months

(d) Have you filed, or do you plan to file, any motion, petition, or application that challenges the judgment or sentence to be served in the future? Yes ☒ No ☐

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18. **TIMELINESS OF MOTION:** If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2255 does not bar your motion.*

*The movant's motion is timely filed under
Section 2255(F)(3)*

* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2255, paragraph 6, provides in part that:

A one-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of –

- (1) the date on which the judgment of conviction became final;
- (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making such a motion by such governmental action;
- (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

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Therefore, movant asks that the Court grant the following relief: Dismiss Indictment, 922CG(c),
Conviction, vacate and remand back to the district to address
Ineffective Assistance claim
or any other relief to which movant may be entitled.

N/A
Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Motion
under 28 U.S.C. § 2255 was placed in the prison mailing system on JUNE, 05, 2020 ←
(month, date, year)

→ Executed (signed) on June 5, 2020 (date)

→ Lamont E. McCard
Signature of Movant

If the person signing is not movant, state relationship to movant and explain why movant is not signing this motion.